file HR 14564

really, of what should be wider public interest, will I now present to my colleagues a thorny issue involving how much money should be voted, in the way of "transition" assistance and staff allowances, et cetera, under the Former Presidents Act, for the use of former President Richard M. Nixon.

As the ranking Republican member on the Steed subcommittee that was called upon to consider these two controversial budget requests, I know full well that Members will want to inquire deeply into the justification for the same. I also know that there has been an unfortunate amount of misunderstanding—even perhaps some unintentional misrepresentation—on the part of the news media concerning these items.

I have, naturally enough, had a substantial number of letters on this subject and have replied to the same through use of a general response, composed following the subcommittee's tentative action. A copy of that response is now set forth in the hope that enough of my colleagues will read through it for background information as to the subcommittee's decision so as to make our debate over the same more informed and useful than it might otherwise be.

GENERAL RESPONSE LETTER

Your communication on the $850,000 request made of Congress by President Ford to provide "transition" moneys and after next February 9th, staff aid and other benefits for the use of former President Nixon is noted. The volume of my mail on this subject is such that I must give you this rather general reply. If it is not fully responsive to some of the points you raised, I shall be glad to hear from you further.

The request was based-on two existing laws, the Former Presidents Act of 1958 (FPA), and the Presidential Transition Act of 1963 (PTA). All former Presidents starting with Herbert Hoover, as the oldest former President eligible, have received benefits under the FPA. Benefits available include the former President's pension (now $60,000 per annum); up to $96,000 per annum in office staff salaries (and such employees' related benefits as the government's share of their retirement and health programs); the privilege of "franked" mail (with reimbursement required of equivalent postage to the Postal Service), plus the provision of such office space and equipment, the cost of communications, and of travel and related expenses as Congress may allow.

The actual annual cost of benefits thus paid out has varied with the former President-beneficiaries. Comparisons are not altogether helpful, but former President Truman in 1972, while occupying rent-free space in the Truman Library, received $122,375, this being his last full year of such assistance. In the same year, which was also his last full year, former President Johnson received $206,590 in such benefits.

President Ford's request in behalf of Mr. Nixon was for $400,000, and included $55,000, representing 11/12ths of Mr. Nixon's pension in this Federal fiscal year; the full $96,000 for staff, plus another $8,000 for their related benefits; the cost of office equipment estimated at $50,000, and the cost of "communications" (most of which would be for postage) estimated at $35,000; printing costs estimated at $10,000; travel expenses for Mr. Nixon and two staff aides estimated at $10,000; $110,000 towards the cost of a proposed vault to be built in a Federal facility near San Clemente, California, to temporarily house some of the classified Nixon papers, and, finally, $26,000 in "miscellaneous" expenses.

The House Appropriations Subcommittee (on which I am the ranking Republican Member) handling the request, disallowed specifically the moneys requested for the proposed vault and recommended that all such Nixon papers and tapes should continue to be held by the Ford Administration and not removed to California until after Special Prosecutor Jaworski and the courts had concluded the still-pending Watergate inquiries. The subcommittee specifically allowed the $55,000 requested for Mr. Nixon's pension, but then reduced the overall request to a proposed total of $150,000—in effect leaving it to Mr. Nixon to allocate the remaining $98,000 as might best suit his needs as a former President between next February 9th and June 30th, the end of the present Federal fiscal year. The subcommittee action—obviously a compromise—is subject as this is written to such modification as may be made by the full Appropriations Committee, or the House and the Senate.

Transition moneys to help an outgoing President "wind up" his Presidential affairs are available only during the first six months after he has left office; thus to next February 9th, in Mr. Nixon's case. Under the PTA, they are limited to $900,000 to be shared between the outgoing President and an incoming President, and are intended to be used again for suitable temporary office space and equipment, staff salaries and benefits, the cost of postage, of travel, and the like. President Ford waived any such benefits, but requested the full $450,000 (one half of the authorized total) for Mr. Nixon's benefit, citing the outgoing President's need to reply to some 350,000 accumulated letters addressed to him, and his need to begin to sort and declassify the mass of personal and public papers left behind in Washington after his precipitate departure therefrom in August.

For obvious reasons, only outgoing President Johnson was eligible for aid under this Act. Comparisons again are not altogether helpful since Mr. Johnson had some nine months to get ready to leave office after announcing his decision not to stand for reelection. Nevertheless, he did receive $375,000 in such benefits under the PTA's authority, with another $75,000 worth of such benefits going to Hubert Humphrey, as outgoing Vice President.

Our subcommittee reduced the $450,000 Ford request to $245,000—in part in light of the fact that Mr. Ford has, up to now, detailed certain former Nixon White House personnel to Mr. Nixon's use at San Clemente, as the PTA permits him and other Federal department and agency heads to do on a non-reimbursable basis during that same six months period. Again, the subcommittee action is subject to full Committee, or House and Senate modification.

Thus, at this writing, the Ford total of $850,000 has been tentatively reduced to $398,000—including $55,000 for the Nixon pension to which he appears to be legally entitled whatever one's opinion of him.

I recognize full well that some critics think Mr. Nixon should receive nothing further in such Federal benefits—and Congress may eventually bow in that direction of public opinion. I have no personal enthusiasm for supporting the subcommittee's action. Nevertheless, it seems to me that Mr. Nixon does face a problem in dealing with his mail and his papers, and that, despite the nature of his leaving office, he should not be left high and dry, as it were, to solve the same on his own; not, that is, unless Congress now wishes to reconsider the intent and availability of the benefits so that "good" Presidents receive benefits in excess of those now authorized, "average" Presidents receive the currently authorized amounts, and "bad" Presidents receive nothing.

Kindest regards,

Sincerely yours,

HOWARD W. ROBISON,
Member of Congress.

The SPEAKER pro tempore. Under a previous order of the House the gentleman from California (Mr. DON H. CLAUSEN) is recognized for 30 minutes.

[Mr. DON H. CLAUSEN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

SURVEILLANCE OF PRIVATE AMERICAN CITIZENS BY THEIR GOVERNMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. MOSHER), is recognized for 15 minutes.

Mr. MOSHER. Mr. Speaker, I have requested this special order so that I may speak briefly about an extremely serious matter, surveillance of private American citizens by their Government.

Earlier this year, on April 2, I joined with many of my colleagues in another special order, on the subject of rights to privacy. At that time, I noted, "when Government agents are turned loose at the whim of bureaucrats and politicians to search our homes, seize our papers and tap our telephones without any prior judicial approval, the most important liberties of a free people are eroded."

To remedy what I believe is a very alarming trend in the executive branch toward increased Government surveillance without prior court orders, I joined with our former colleague, Senator Mac Mathias, to coauthor the Bill of Rights Procedures Act of 1974.

That bill, which was first introduced in the House on May 2 as H.R. 14564, requires that the Federal Government must obtain, in all cases, court orders for the interception of communications by electronic and other devices, for the entering of any residence, for the opening of any mail and for the inspection or procurement of certain records.

Last month, the House Republican Task Force on Privacy, of which I am a member, issued its preliminary report—reprinted in the CONGRESSIONAL RECORD of September 13. In the report's section on surveillance, we unanimously stated:

The Task Force on Privacy is deeply disturbed by the increasing incidence of unregulated, clandestine Government surveillance based solely on administrative or executive authority.

In summarizing its findings in the area of surveillance, the report says:

The Task Force feels that surveillance is so repugnant to the right to individual privacy and due process that its use should be confined to exceptional circumstances. The Task Force further feels that no agent of federal, state, or local government should be permitted to conduct any form surveillance, including wire-tapping of U.S. citizens in national security cases, without having demonstrated probable cause and without having obtained the approval of a court of competent jurisdiction. The Task Force recommends enactment of new legislation to prohibit the

unauthorized surveillance by any means, and further recommends that existing laws by clarified to the extent this may be necessary to ensure that no agent of the government shall have the authority to conduct any surveillance on any American citizen for any reason without first obtaining a court order.

The Task Force believes that this proposal would not lessen the capability of the government to protect and defend the American people, but would go a long way toward assuring the individual citizen that his constitutional rights will not be abridged by government without due process of law.

Mr. Speaker, I am very pleased to inform you that five of my colleagues on the Task Force on Privacy today joined me in retintroducing the Bill of Rights Procedures Act. The very able chairman of the task force, Mr. GOLDWATER, and my fellow members, Mr. CONLAN, Mrs. HECKLER, Mr. LAGOMARSINO, and Mr. THONE, are cosponsoring the bill I placed in the hopper today.

I am grateful for their support and involvement, and I look forward to the added support of many more Members. During the next few weeks, I will be actively seeking additional cosponsors for the Bill of Rights Procedures Act of 1974.

At this point, I would like to present a brief summary of the legislation I am advocating here today. It is my sincere hope that the Judiciary Committee will be able to act upon this proposal as expeditiously as possible.

SUMMARY OF BILL OF RIGHTS PROCEDURES ACT OF 1974

The key provision of the proposed Bill of Rights Procedures Act is that it would require any Federal government agent to obtain a court order before he or she may conduct any form of surveillance on a private citizen. Probable cause would have to be demonstrated before the court order could be issued, and the warrant must be specific in its particulars.

The term "surveillance" includes bugging, wiretapping, opening of mail, entering of dwellings, and the inspection or procurement of the records of telephone, bank, credit, medical or other private transactions. Court orders would be required in virtually every instance, thus clarifying the law and closing many loopholes in present statutes. The only exceptions made are in the cases of: the serving of an arrest warrant, the "hot pursuit" of a criminal, or when the consent of the subject individual has been obtained.

A penalty of up to $10,000 and/or a year imprisonment is provided for any government official, employee, or agent who willfully violates or causes the violation of this legislation.

The bill requires that within thirty days after application has been made for a court order the applicant must file a report with: the Administrative Office of the U.S. Courts and with the Committees on the Judiciary of the House and Senate. Follow-up reports on approved surveillance activities would also be required.

The Bill of Rights Procedures Act is intended primarily to reinforce the protections provided by the Fourth Amendment to the Constitution. That section assures "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures." This legislation is also directly relevant to the First Amendment (freedom of speech, assembly, etc.) and the Fourteenth Amendment (equal protection).

Mr. GOLDWATER. Mr. Speaker, I am pleased to join Congressman CHARLES MOSHER in this special order marking the introduction of his legislation entitled a Bill of Rights Procedures Act of 1974. This legislation will definitively and conclusively spellout the circumstances and procedures under which the Federal Government can legally conduct surveillance for law enforcement purposes on citizens of the United States.

As the chairman of the House of Representatives Republican Task Force on Privacy, I believe this bill to be of special significance. The "Surveillance" section of that report reads as follows:

The Task Force feels that surveillance is so repugnant to the right to individual privacy and due process that its uses should be confined to exceptional circumstances. The Task Force further feels that no agent of federal, state, or local government should be permitted to conduct any form of surveillance, including wiretapping of U.S. citizens in national security cases, without having demonstrated probable cause and without having obtained the approval of a court of competent jurisdiction. The Task Force recommends enactment of new legislation to prohibit the unauthorized surveillance by any means, and further recommends that existing laws be clarified to the extent this may be necessary to ensure that no agent of the government, for any reason, shall have the authority to conduct any surveillance on any American citizen for any reason without first obtaining a court order. (Page 3.)

Mr. MOSHER's legislation is fully consistent with the task force recommendations. It will go a long way toward eliminating the technical gray areas and traps that have ruined good law enforcement cases. It will eliminate that vague administrative prerogative that encourages abuse and misuse of the surveillance power. This legislation will enable the law enforcement officer to be certain of his authority while ensuring the protection of those basic, inalienable rights and liberties we Americans hold so dear.

I commend Congressman MOSHER's legislation to the considered attention of my congressional colleagues.

GENERAL LEAVE

Mr. REGULA. Mr. Speaker, I ask unanimous consent that all Members may have permission to extend their remarks on the subjects of the special order of the gentleman from Ohio (Mr. MOSHER).

The SPEAKER pro tempore (Mr. MCFALL). Is there objection to the request of the gentleman from Ohio?

There was no objection.

DELINQUENT FOREIGN DEBT OWED UNITED STATES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas (Mr. ALEXANDER) is recognized for 15 minutes.

Mr. ALEXANDER. Mr. Speaker, this week the Economic Summit Conference will convene in Washington. In reviewing the agenda, I am surprised to discover the delinquent foreign debt owed to the United States, which exceeds $60 billion, is not included. In hopes that this important matter may be considered, I have forwarded the following letter to President Ford:

HOUSE OF REPRESENTATIVES,
Washington, D.C., September 23, 1974.

President GERALD FORD,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: This letter is written with the hope that you will give thoughtful consideration to adding a subject to the agenda of your Economic Summit meeting this week. That subject is the $60 billion foreign debt owed to the United States.

Briefly, the situation is this. The Foreign Operations and Government Information Subcommittee of the House Committee on Government Operations, of which I am a Member, has been conducting detailed studies for five years of the problem of delinquent international debts and unpaid claims owed to the United States. Our findings show *more than 100 countries of the world are delinquent in paying their debts, including nations that are now prosperous. Some are now gouging us with high prices for their oil.*

The Departments of State, Defense and Treasury are pushing debt collection in some countries but failing miserably in several other key nations, such as France and Iran. The total foreign debt owed to the United States is still growing rather than decreasing. This tide must be reversed. I'm sure you will agree.

I respectfully urge that the Economic Summit address itself to the following courses of action:

1. The launching of a top-priority effort to collect delinquent debts and unpaid claims owed to the United States;

2. Asking new prosperous nations to accelerate their debt payments to help us in our time of need; and

3. Urging the oil-rich nations to pay the full amount of debts and claims owed to the United States.

4. Seeking new creative ways to make it possible for the less developed nations to meet their debt obligations to the United States, such as the bill, H.R. 6061, which you co-sponsored as a Member of the House of Representatives in the current session of Congress.

Mr. President, I am sure the American people and the Congress would applaud the inclusion of this subject on the agenda of the Economic Summit. In any event, I would greatly appreciate it if you would kindly include this letter in the record of your proceedings.

With kind regards,
Faithfully yours,
BILL ALEXANDER,
Member of Congress.

REMARKS OF CONGRESSMAN GONZALEZ IF HE COULD PARTICIPATE IN PRESIDENT'S CONFERENCE ON ECONOMICS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GONZALEZ) is recognized for 5 minutes.

Mr. GONZALEZ. Mr. Speaker, the capitals awash with economic thinkers these days. Cabinet officers and economic advisers are up to their ears in advice—hearing impossibly oversimplified summations of things they mostly already know, chairing this or another meeting to hear nostrums and complaints—and occasionally bemoaning the fate of stockbrokers.

All this summitry more than faintly resembles the one contribution of Hitler's finance minister, one Schmidt, who assembled a national meeting to discuss

ordered to be printed in the RECORD, as follows:

S. 3439

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The National Fuel Economy Testing Act of 1974".

SEC. 2. 1857f-5(a)(1), Title 42 of the United States Code is hereby amended by adding after the first sentence the following: "Concurrently with such testing the Administrator shall determine and publish the fuel economy of such vehicles and engines."

By Mr. MATHIAS (for himself, Mr. MANSFIELD, Mr. ERVIN, Mr. JAVITS, Mr. HART, and Mr. PEARSON):

S. 3440. A bill to require in all cases court orders for the interception of communications by electronic and other devices, for the entering of any residence, for the opening of any mail, for the inspection or procurement of certain records, and for other purposes. Referred to the Committee on the Judiciary.

A PROPOSAL TO STRENGTHEN CONSTITUTIONAL PROCESSES

Mr. MATHIAS. Mr. President, we have arrived at a critical turning point in American history. While it is difficult to draw back and look objectively at events of recent years, and while it is difficult to separate the travesty of a political burglary and the subsequent coverup from the larger and more important issues, it is vital for the survival of democracy in the United States that we do so. The revelations of Watergate have included, to our sorrow as well as to our enlightenment, evidence that suggests covert attacks upon constitutional government. The object of these attempts would have been to substitute arbitrary and secretive procedures for the open processes of our constitutional government in the interests of "efficiency," "national security" or emotional calls to patriotism. It has further been revealed that some of our fundamental constitutional guarantees have been abridged and justified by recourse to alleged "higher necessities" such as "national security" or "foreign policy."

The increasing demands of technology and the growing power of bureaucratic structures have proven to be the greatest threat to human freedom and, indeed, to the survival of humanity itself. Watergate is merely another reminder of the great dangers that face not only democracy in the United States but human freedom everywhere. The most pressing dangers are not from our potential enemies but from our own uncontrolled power. The ultimate concern is survival; but the choice is our own. Shall we be ruled by technology and be overwhelmed by nuclear annihilation, or shall we make technology serve the needs of man? We can control the technology of nuclear weapons only by agreements between nations and within nations to remove the scourge of nuclear war and the threat of nuclear annihilation.

No less significant than the overhanging apocalyptic dangers of uncontrolled technology are the dangers posed by the imperatives of efficient bureaucracies and increasingly centralized power. We are witnesses to the fact that some of those in power over the years, here and elsewhere, have used the "needs of state," "national security," or "foreign policy," or similar euphemisms as reasons to set aside rational debate and open inquiry upon national issues so necessary to the effective operation of constitutional processes. Let there be no mistake about it. Watergate is symtomatic of larger threats to our liberties, threats latent in our society for many years.

How the Congress, the courts and the people act in the coming months will determine, in large measure, whether the United States will return to an open, truly democratic Government whose decisions are made upon the basis of full and reasoned debate by all three branches in their several ways, or whether it will make its major decisions outside of prescribed constitutional processes and continue along the path of authoritarian rule. This is the underlying challenge we must face; and this is the challenge to freedom we must overcome.

The particular wrongs revealed by Watergate are in the process of being corrected. The courts are acting upon the investigations and findings of the Special Prosecutor's office. We can expect at the end of 2 or 3 years, as Special Prosecutor Leon Jaworski has recently informed us, that all those implicated in Watergate will be brought before the bar of justice and through trials by their peers will receive judgment.

Congress has already begun to take steps to correct, through legislation, abuses that have been revealed by Watergate. Significant steps have already been made on campaign reform. And other reforms will be made following upon the findings made by the Senate Special Committee on Watergate issues when it issues its final report at the end of this month.

The most important impact of Watergate has been on the public. Through the press, TV, and journals, citizens throughout this land have begun to examine not only the quality of government, but the fundamental purposes of our Government. It is my view that the work of journalists, scholars, and lawyers and people in every profession and walk of life will contribute to the growing concern that safeguards to our constitutional government be strengthened, so that encroachments made by those who would have the United States governed by arbitrary power will not be made again.

The greatest task that faces the Congress is to repair the cracks in the foundations of our constitutional government revealed by Watergate. The most serious of the many Watergate issues that has been revealed are contained in the so-called Huston Plan which, by the President's own admission in his speech of May 22, authorized activities which abridged the guarantees of the fourth amendment.

The fourth amendment of the Bill of Rights provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probably cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

It is evident from the various Watergate investigations that protections of individuals under the fourth amendment had been repeatedly violated. It is also evident that it is the duty of the Congress to establish through statute what is meant by "unreasonable searches and seizures."

The Supreme Court in its decision, United States against United States District Court for the Eastern District of Michigan et al. of June 19, 1972, urged the Congress to clarify the issue with regard to so-called national security matters, because no statutory guidelines exist. The Safe Streets Act of 1968 provided guidelines delimiting the activities of our law enforcement officers in the domestic criminal area. Watergate, the Houston Plan, and the many examples of abuse of the fourth amendment revealed by current investigations make it necessary, in my view, to meet the challenges posed by these abuses by remedial statutory action.

The problems raised by Watergate which have threatened the efficacy of the fourth amendment were well understood by Justice Brandeis in his opinion written for the Olmstead case in 1927 (277 U.S. 438) which in a prophetic way foretold many of the problems we have only now come to realize as such threats to our liberties:

> Time works changes, brings into existence new conditions and purposes. Therefore a principle to capable of wider application than the mischief which gave it birth.
>
> This is peculiarly true of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall "designed to approach immortality as nearly as human institutions can approach it." The future is their care and provision for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been but of what may be. Under any other rule a constitution would indeed be as easy as application as it would be deficient in efficacy and power. Its general principles would have little value and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality.
>
> When the Fourth and Fifth Amendments were adopted, "the form that evil had theretofore taken," had been necessarily simple. Force and violence were then the only means known to man by which a Government could directly effect self-incrimination. It would compel the individual to testify—a compulsion effected, if need be, by torture.
>
> It could secure possession of his papers and other articles incident to his private life—a seizure effected, if need be, by breaking and entry. Protection against such invasion of "the sanctities of a man's home and the privacies of life" was provided in the Fourth and Fifth Amendment by specific language. Boyd v. United States, 116 U.S. 616, 630. But "time works changes, brings into existence new conditions and purposes," Subtler and more far-reaching means of invading privacy have become available to the Government. Discovery and invention have made it possible for the Government, by means far more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet.

With Justice Brandeis' admonitions in mind, I introduce today (with Mr. MANSFIELD, Mr. ERVIN, Mr. JAVITS, Mr. HART, and Mr. PEARSON) a bill which would strengthen the guarantees of privacy contained in the fourth amendment. The bill, entitled, the Bill of Rights Procedures Act of 1974, would, if enacted, provide firm statutory guidelines for "reasonable searches and seizures," required because there was probable cause that a crime has been or was about to be committed.

In our view, the protections of the fourth amendment should not be limited by any arbitrary action on the part of the executive branch or any of the three branches. Exceptions for any cause, including so-called "national security," should be made only in accord with constitutional processes, in these cases with the requirement of a Federal court order, an accounting of the reasons for the exception, and the disposition of the actions taken under the exception in reports made to the appropriate judicial and congressional bodies who shall in turn be required to protect the privacy of the individuals concerned as provided by the fourth amendment. The record of actions taken would be made available, with appropriate protections for individuals, in order to assure that those in the Congress and the courts who must maintain oversight do not, in turn, abuse the fourth amendment they are under oath to protect.

I know that this bill will receive thorough consideration by the Senate and the House, and that if enacted, would do much to strengthen the freedom guaranteed by the Constitution and the Bill of Rights.

It is, perhaps, only when our freedom has been threatened that we come to an understanding of how precious liberty is to the human spirit. The troubled times which we now live in are a warning that we must act to protect our basic liberties. It is up to us in the Congress, particularly, to take those reasonable steps which the times so passionately call for, and carry out our responsibilities to defend the Constitution by enacting statutory guidelines to assure that the Constitution and Bill of Rights remain secure from the assaults of arbitrary power.

In conclusion, I would like to turn once again to the profound, still relevant and stirring words of the last paragraph of Justice Brandeis' opinion in Olmstead against United States written about 45 years ago:

Decency, security and liberty alike demand that Government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the Government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the Government may commit crimes in order to secure the conviction of a private citizen—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

In my view, it is necessary that the Congress also must resolutely set its face against criminal actions taken by the Government under the guise of "National security" or some such vagaries which amount to little more than the ends justifying the means.

We have had clear and unmistakable warning, and it is time to act to remove these encroachments upon our cherished freedoms.

In introducing this bill today, we do so with the full recognition that in the process of hearings and debate and study, that changes in particular detail will be required. We introduce this bill with the hope that through rational discourse and the consideration of the issue by as many of our colleagues as possible, that we can arrive at a just and effective legislative solution to a very serious fundamental constitutional problem that now confronts us.

My colleagues are aware that the Joint Subcommittee of the Constitutional Rights Subcommittee and Administrative Practices Subcommittee of the Judiciary Committee and a Special Subcommittee of the Foreign Relations Committee have been working together over the past 6 months under the able and dedicated joint chairmanship of Senators ERVIN, KENNEDY, and MUSKIE respectively, to deal with the problems created by the absence of adequate constitutional processes in areas such as those that have been revealed in recent wire tap cases. This bill is, in large measure, a result of the fruits of 6 months of inquiry, study, and consideration by the joint subcommittees.

We invite the comments and suggestions of our colleagues and the opinions and views and suggestions of those agencies in the executive branch, in the State governments and in bar associations and universities throughout the country, so that we might come up with the best possible solution to this problem. But we believe that it is essential that we begin to take steps to meet this challenge to constitutional processes, and the bill we introduce today is submitted in the spirit of seeking a solution.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3440

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bill of Rights Procedures Act of 1974".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress hereby finds and declares that—

(1) the rights of the people of the United States under the Constitution of the United States are endangered by interception of communications, other electronic surveillance, the entry of dwellings, opening mail, and the inspection of and procuring of the records of telephone, bank, credit, medical, or other business or private transactions of any individual when undertaken by officials, agents, or employees of the United States without a court order issued upon probable cause that a crime has been or is about to be committed, supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

(2) the constitutional duty of the Congress to make the laws and to provide for the common defense, and the constitutional duty of the President to execute the laws and to command the Armed Forces and other security forces according to rules and regulations made by the Congress, would not be impeded by requiring court orders for any interception of communications, other electronic surveillance, the entry of dwellings, opening mail, or the inspection of and procuring of the records of telephone, bank, credit, medical, or other business or private transactions of any individual;

(3) the constitutional duty of the Congress to make laws to protect the national security of the United States and the constitutional duty of the President to execute such laws should not limit the rights of individuals under the Constitution of the United States. Any interception of communications, other than electronic surveillance, the entry of dwellings, opening mail, or the inspection of and procuring of the records of telephone, bank, credit, medical, or other business or private transactions of any individual which is undertaken on any grounds, including but not limited to, national security or foreign policy, without a court order issued upon probable cause that a crime has been or is about to be committed, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized, constitutes "an unreasonable search and seizure" within the meaning of the fourth amendment to the Constitution of the United States.

(b) It is therefore the purpose of this Act to prohibit any interception of communication, other electronic surveillance, surreptitious entry, mail opening, or the inspection of and procuring of the record of telephone, bank, credit, medical or other business or private transaction of any individual without a court order issued upon probable cause that a crime has been or is about to be committed supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

SEARCHES AND SEIZURES

SEC. 3. Section 2236 of title 18, United States Code, is amended to read as follows:

"§ 2236. Searches without warrant

"(a) Whoever, being an officer, agent, or employee of the United States or any department or agency thereof willfully—

"(1) searches any private dwelling used and occupied as a dwelling without a warrant directing such search or maliciously and without reasonable cause searches any other building or property without a search warrant;

"(2) procures or inspects the records of telephone calls, bank, credit, medical or other business or private transactions of any individual without a search warrant or the consent of the individual;

"(3) opens any foreign or domestic mail not directed to him without a search warrant directing such opening or without the consent of the sender or addressee of such mail in violation of section 3623(d) of title 39; or

"(4) intercepts, endeavors to intercept, procures any other person to intercept any wire or oral communication except as authorized under chapter 119;

shall be fined not more than $10,000 or imprisoned not more than one year, or both.

"(b)(1) The provisions of section (a)(1) shall not apply to any person—

"(A) serving a warrant of arrest;

"(B) arresting or attempting to arrest a person committing or attempting to commit an offense in his presence, or who has committed or is suspected on reasonable grounds of having committed a felony; or

"(C) making a search at the request or invitation or with the consent of the occupant of the premises.

"(2) For purposes of subsection (a) the terms 'wire communication', 'oral communication', and 'intercept' shall have the same meaning as given to such terms under chapter 119."

INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS

SEC. 4. (a) Section 2511(1) of such title 18 is amended by striking out "Except as otherwise specifically provided in this chapter" and inserting in lieu thereof "Except as specifically provided in this chapter, and except as specifically provided in chapter 109 in the case of any officer, agent or employee of the United States,".

(b) Sections 2511(3), 2518(7), 2518(d), and the last sentence of section 2520 of such title 18 are repealed.

REPORTING OF INTERCEPTED COMMUNICATIONS

SEC. 5. (a) Section 2519 of such title 18 is amended to read as follows:

"§ 2519. Reports concerning intercepted wire, oral, and other communications.

"(a) Within thirty days after the date of an order authorizing or approving the interception of a wire or oral communication (or each extension thereof) entered under section 2518, or the denial of an order approving an interception, the person seeking such order shall report to the Administrative Office of the United States Courts and to the Committees on the Judiciary of the Senate and House of Representatives—

"(1) the fact that an order or extension was applied for;

"(2) the kind of order or extension applied for;

"(3) the fact that the order or extension was granted as applied for, was modified, or was denied;

"(4) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

"(5) the names of all parties to the intercepted communications;

"(6) the offense specified in the order or application, or extension of an order;

"(7) the identity of the investigative or law enforcement officer and agency making the application and the person authorizing the application to be made;

"(8) a copy of the court order authorizing, approving, or denying such interception;

"(9) the nature of the facilities from which or the place where communications were intercepted.

"(b) Within 60 days after the date of an order authorizing or approving the interception of a wire or oral communication (or extension thereof) entered under section 2518, or the denial of an order approving an interception, the judge hearing the application for such order shall transmit to the Committees on the Judiciary of the Senate and House of Representatives a complete transcript of the proceedings.

"(c) Within 90 days after the date of an order authorizing or approving the interception of a wire or oral communication (or each extension thereof) entered under section 2518, and within 60 days after the termination of any such interception, the person authorized to make such interception shall report to the Administrative Office of the United States Courts and to the Committees on the Judiciary of the Senate and House of Representatives the disposition of all records (including any logs or summaries of any such interception) of any such interception and the identity of and action taken by all individuals who had access to any such interception."

(b)(1) Any information transmitted or submitted, pursuant to section 2519(a)(5) of title 18, United States Code (as added by subsection (a) of this section), to the Congress or to any standing, special, or select committee of either House of Congress or to any joint committee of the two Houses of Congress, shall be treated as a confidential communication and kept secret.

(2) Paragraph (1) of this subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such shall be considered as a part of the rules of each House, respectively, or of that House to which it specifically applies, and such rule shall supersede other rules only to the extent that they are inconsistent therewith, and

(B) with full recognition of the constitutional right of either House to change such rule (so far as it relates to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

REPORTING AUTHORIZATIONS TO OPEN MAIL

SEC. 6. Chapter 205 of such title 18, is amended by adding at the end thereof the following new section:

"§ 3117. Reporting requirements in the case of warrants issued authorizing the opening of mail

"(a) Within 30 days after the date of issuance of a warrant to open any mail or the denial of such a warrant the person seeking such warrant shall report to the Administrative Office of the United States Courts and to the Committee on the Judiciary of the Senate and House of Representatives—

"(1) the fact that a warrant was applied for;

"(2) the fact that the warrant was issued as applied for, was modified, or was denied;

"(3) the offense specified in the warrant;

"(4) the identity of the investigative or law enforcement officer and the agency making the application and the person authorizing the application to be made;

"(5) the names of the sender and addressee of all mail opened pursuant to such warrant;

"(6) a copy of the approved warrant;

"(7) the nature of the facilities from which or the place where any such mail was opened; and

"(8) the disposition of all records (including any log, copy, or summary) of any such mail or the contents of such mail and the identity of and action taken by all individuals who had access to any such mail.

"(b) Within 60 days after the date of any warrant authorizing the opening of any mail, or the denial of any such warrant, the judge hearing the application for such warrant shall transmit to the Committee on the Judiciary of the Senate and House of Representatives a complete transcript of the proceeding."

TECHNICAL AMENDMENT

SEC. 7. The analysis of chapter 205 of such title 18 is amended by adding at the end thereof the following new item:

"3117. Reporting authorizations to open mail."

BILL OF RIGHTS PROCEDURES ACT OF 1974

Mr. HART. Mr. President, I am pleased to join the Senator from Maryland, (Mr. MATHIAS) and several other colleagues in sponsoring the Bill of Rights Procedures Act of 1974. It is my hope this will mark an important turning point in the exercise of Congress responsibility to insure compliance with the spirit and the letter of the Bill of Rights.

Several weeks ago, in a statement on the variety of threats to our privacy posed by Government abuse of its powers, I noted the dangers of Government officials eavesdropping on the private conversations of political opponents or of those who opposed particular policies:

Many of these actions by our government have been defended on grounds of "national security," but we have come to understand that there is a wide range of constitutional abuses a determined political operative can seek to have excused under that mantle. And, indeed, the American people realize that.

A recent poll, for example, showed that 75 percent of those interviewed considered "wiretapping and spying under the excuse of 'national security' as a serious threat to people's privacy."

Among the steps I urged to combat this danger was an immediate Presidential order that no wiretapping, bugging or breaking and entering be carried out without authority of an independent court order. And I suggested that the President and Congress should together pass permanent legislation codifying that safeguard.

It now appears that we may be able to enact legislation sooner than we might obtain favorable support from the administration. As Senator MATHIAS noted, this bill is the result of many months of research, consideration and consultation with legal experts on the problems of balancing national security interests against the purpose of the fourth amendment.

Those joining in sponsorship of the bill today may not be in complete agreement on every one of its details. For example, the committee hearings on it will have to consider any further modification necessary to accommodate Government surveillance of foreign diplomatic personnel where such surveillance would not unreasonably threaten the privacy of American citizens.

Also, the sections dealing with the requirement of a warrant based on probable cause for Government inspection of bank records or other personal records may have to be refined to make clear that certain regulatory functions will not be hindered.

But the basic structure of the proposal is a reasonable and thoughtfully drawn approach and the requirement of a warrant based on probable cause to believe a crime has been committed before any electronic surveillance is undertaken is the crux of the effort.

To those who say it would unduly hamper legitimate efforts to prevent sabotage or espionage, we can suggest they examine more closely the present Federal criminal code. The variety of statutes covering such crimes, combined with the several statutes making any attempt or conspiracy in regard to such offenses a crime as well, cover even the formative stages of any serious threat to our national security. At the point when activities by Americans present a real danger, I believe, the Government should be able to establish before a magistrate, on the basis of other kinds of investigation and surveillance, that there is probable cause to believe a crime has been or is about to be committed.

To permit a broader authority for wiretapping—whether warrantless taps

authorized by the Attorney General, or taps authorized by a warrant issued on a lesser standard than probable cause of a crime—would emasculate the vital protection of the fourth amendment.

The basic design of the fourth amendment, the simple common sense of the Founding Fathers, was to interpose a neutral independent magistrate between Government officials and unpopular citizens or political critics. That is the safeguard this bill would insure.

In the weeks ahead, additional comments can be made on the significance of this measure.

For now, I wish to commend especially the Senator from Maryland (Mr. MATHIAS), and the other Senators who have taken the lead on this problem: the Senator from North Carolina (Mr. ERVIN); the Senator from Maine (Mr. MUSKIE); and the Senator from Massachusetts (Mr. KENNEDY) and their subcommittees whose joint hearings have been very illuminating. We should also acknowledge the groundbreaking effort of Senator NELSON's earlier bill along similar lines.

Mr. President, for too many years, the magic incantation "national security—stay away" has sufficed to deter the Congress from examining with a truly critical eye many practices which threaten our basic liberties. Are these practices essential to preserve our Nation's freedom? Or are they really a threat to our freedoms because of their subversive effect on the guarantees of the Bill of Rights?

I suspect that in a great many of these areas, Mr. President, we may well find that the Emperor really has no clothes after all. In the case of warrantless wiretaps of American citizens, conducted in the name of national security, I have concluded that the potential for abuse and infringement of constitutional rights, far outweighs any incremental advantage for legitimate law enforcement.

I hope this bill will be carefully considered and supported by our colleagues.

By Mr. MONTOYA (for himself, Mr. BENTSEN, Mr. CRANSTON, Mr. FULBRIGHT, Mr. KENNEDY, Mr. MONDALE, and Mr. TUNNEY):

S.J. Res. 209. Joint resolution to authorize and request the President to issue a proclamation designating May 12-18, 1974, as "National Migrant Education Week". Referred to the Committee on the Judiciary.

Mr. MONTOYA. Mr. President, I am today introducing a joint resolution to declare May 12 through 18, 1974, as "National Migrant Education Week." I do this in the interest of insuring better continuous education for migrant children and in recognition of the work to be performed at the Seventh National Conference on Migrant Education.

The Nation's most valuable asset, without question, is her children. They carry with them hopes for the future—building tomorrow's realities from today's dreams. Our record, as a nation, has been one of ever increasing effort to meet the needs of children, and we can be justly proud of what we have done for most American children.

However, the migrant child is truly America's most disinherited child. He treks from State to State, traveling thousands of miles with his parents. His living conditions are inhuman. He is overfed and undernourished. He is exposed to deadly posticides, with inadequate labor safety protection and inadequate health care.

Migrant children must receive an equal chance to receive an education. Yet, statistics show that 90 percent of all migrant children never finish high school. They average only a fourth or fifth grade education.

Slowly, progress is being made in expanding educational opportunities for these migrant children. The passage of Public Law 89-750 amended the Elementary and Secondary Education Act of 1965 to include migrants under the sections of title I concerning aid to disadvantaged children.

The suggestion that we recognize the educational needs of migrant children by the Seventh National Conference on Migrant Education is a valid one. But the declaration is merely an empty gesture if we do not request the President and Federal agencies affecting migrant education to conscientiously participate in these activities. We know that national observance weeks in the past have demonstrated that attention can be brought to pressing problems.

Our declaration of a National Migrant Education Week will certainly demonstrate support to future educational programs to free these children from economic and educational inequalities.

I urge your support for this resolution which will help us to alert others to the educational needs of these migrant children.

REREFERRAL OF A BILL

Mr. EAGLETON. Mr. President, I ask unanimous consent that S. 3417, a bill to amend title 5 of the United States Code—relating to Government organization and employees—to assist Federal employees in meeting their tax obligations under city ordinances, be rereferred to the Committee on Post Office and Civil Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 411

At the request of Mr. McGEE, the Senator from Minnesota (Mr. HUMPHREY) was added as a cosponsor of S. 411, to amend title 39, United States Code, relating to the Postal Service, and for other purposes.

S. 764

At the request of Mr. Moss, the Senator from North Dakota (Mr. BURDICK) was added as a cosponsor of S. 764, to amend title VII of the Public Health Service Act to provide for the making of grants to schools of medicine and assist them in the establishment and operation of departments of geriatrics.

S. 2220

At the request of Mr. FONG, the Senator from Kentucky (Mr. COOK), the Senator from Kansas (Mr. DOLE), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 2220 to repeal the "cooly trade" laws.

S. 2363

At the request of Mr. CRANSTON, the Senator from Idaho (Mr. MCCLURE) was added as a cosponsor of S. 2363, a bill to amend chapter 39 of title 38, United States Code, relating to automobiles and adaptive equipment for certain disabled veterans and members of the Armed Forces.

S. 2782

At the request of Mr. JACKSON, the Senator from Colorado (Mr. HASKELL) was added as a cosponsor of S. 2782, the Energy Information Act.

S. 2901

At the request of Mr. ALLEN, the Senator from West Virginia (Mr. ROBERT C. BYRD) was added as a cosponsor of S. 2901, to change the date of Veterans Day from the fourth Monday in October to November 11th.

S. 2938

At the request of Mr. JACKSON, the Senator from New Mexico (Mr. MONTOYA) was added as a cosponsor of S. 2938, the Indian Health Care Improvement Act.

S. 3209

At the request of Mr. NELSON, the Senator from Nevada (Mr. BIBLE), the Senator from Maine (Mr. HATHAWAY), the Senator from Utah (Mr. Moss), the Senator from Rhode Island (Mr. PELL), the Senator from Kentucky (Mr. Cook), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Minnesota (Mr. HUMPHREY) were added as cosponsors of S. 3209, to establish a National Resource Information System.

S. 3234

At the request of Mr. HUMPHREY the Senator from South Dakota (Mr. MCGOVERN) was added as a cosponsor to S. 3234, a bill to authorize a vigorous Federal program of research and development to assure the utilization of solar energy as a major source for our national energy needs, to provide for the development of suitable incentives for rapid commercial use of solar technology and to establish an Office of Solar Energy Research in the U.S. Government.

S. 3277

At the request of Mr. DOMENICI, the Senator from Rhode Island (Mr. PELL) was added as cosponsor to S. 3277, a bill to amend the Solid Waste Disposal Act, to encourage full recovery of energy and resources from solid waste, to protect health and the environment from the adverse effects of solid waste disposal, and for other purposes.

S. 3316

At the request of Mr. Moss, the Senator from Utah (Mr. BENNETT) and the Senator from Iowa (Mr. HUGHES), were added as cosponsors of S. 3316, to establish National Historic Trails as a new category of trails within the National Trails System, and for other purposes.

S. 3330

At the request of Mr. HARTKE, the Senator from New Mexico (Mr. DOMENICI),